

# THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS

## 2005-2006 GUIDELINES

**Note:** Section 6.7 and Section 6.8 of S.L. 2005-276 (attached beginning on page 4) made significant changes to the statutes concerning prior consultation with the Joint Legislative Commission on Governmental Operations. Please review these sections carefully for specific changes and requirements.

### **COMMISSION PURPOSE AND PROCEDURES**

- **Purpose:** The Joint Legislative Commission on Governmental Operations (Governmental Operations) was created in 1975 (G.S. 120-71 through 120-79) as a means to provide ongoing legislative examination and review of public policies, expenditures and reorganization implementation during the interim between legislative sessions. Governmental Operation's oversight function includes, but is not limited to, evaluation of program costs and benefits, management effectiveness issues, internal control issues, and compliance issues. Various general statutes and session laws also require State agencies and other entities to consult with Governmental Operations before taking action on a particular issue or to submit reports for its review.
- **Meeting Dates and Times:** During the interim between the legislative sessions, Governmental Operations meets on a periodic basis. These meetings are typically held on the third Tuesday and Wednesday of designated months. Subcommittee meetings are held on Tuesdays at 1 pm and the full Commission meets on Wednesdays at 9 am. Meetings will be held during the legislative session as needed. Please check the General Assembly's interim calendar to confirm meeting dates, times and locations.
- **Agenda:** Every effort will be made to publish the agendas of the full Commission and its subcommittees on the General Assembly's website no later than the Thursday preceding the meeting. After the agenda has been posted, new items can be added only with the approval of the Office of the Speaker and the Office of President Pro-Tempore. Agenda items must first be considered by the appropriate subcommittee prior to being brought before the full Commission.
- **Commission Staff:** The Fiscal Research Division serves as staff to Governmental Operations. The Joint Budget Development Team serves as lead staff to the full Commission. Subcommittees are staffed by the respective fiscal analysts responsible for the subject matter covered by the subcommittee.

# **GUIDELINES FOR REPORTING ENTITIES**

## **General Procedures**

- **Responsibilities for Reports and Consultations:** The Fiscal Research Division staff is familiar with reporting requirements set out in statutes, appropriations acts, and session laws, and will attempt to enforce those requirements as applicable. However, State agencies, institutions, boards, commissions and other entities are solely responsible for complying with all reporting and consultation requirements mandated by State law.
- **Submission of Reports and Consultation Documents:** All reports and consultation requirements must be submitted electronically to the Governmental Operations email address ([govops@ncleg.net](mailto:govops@ncleg.net)) by the required date or within the appropriate time frame set out in statutes and session laws. If you are unsure of the required due date, please contact the Fiscal Research Division. If you do not have the capability to submit a document electronically, please contact Kathy Davis, Commission Assistant, at (919) 733-5850 or the Fiscal Research Division at (919) 733-4910 for further instructions.
- **Distribution of Submitted Documents:** Reports and consultations submitted to the Governmental Operations e-mail address will be distributed to the chairs of the Commission (i.e. Speaker of the House and President Pro Tempore of the Senate), the Commission Assistant, the Fiscal Research Division and, in the case of a fee/charge consultation, to all members of Governmental Operations.
- **Deadline for Agenda Development:** State agencies and other entities that wish to have items considered for an agenda must submit their requests and all necessary documents to the Governmental Operations email address no later than 5:00 p.m. on the Tuesday one-week prior to a scheduled meeting. Fiscal Research staff will notify state agencies and other entities selected to appear before Governmental Operations.
- **Copies for Meetings:** Commission assistants will be responsible for making copies of reports and consultations documents for their respective subcommittee and full Commission meetings. However, based on the type and length of the report, a reporting entity may be required to submit hard copies for distribution. In these instances, reporting entities will be notified of the number of copies required and the deadline for submission. Otherwise, it is not necessary to submit hard copies.

## **Procedures for Consultation Requirements**

**Recent Statutory Changes:** Sections 6.7 and 6.8 of S.L. 2005-276 made significant changes to G.S. 120-76.1 and G.S. 12-3.1 to clarify the requirements regarding prior consultation with Governmental Operations. Agencies will now be able to satisfy the consultation requirements regardless of whether Governmental Operations meets on a regular basis.

- **Section 6.7:** This section applies to all consultation requirements, except fees and charges, and requires a consulting entity to submit a detailed report to the chairs of the Commission, the Commission Assistant and the Fiscal Research Division. If Governmental Operations

does not hold a meeting to hear the consultation within 90 days of its receiving the detailed report, then the consultation requirement is deemed satisfied. (Please see a copy of the attached session law.)

- **Section 6.8:** This section applies to consultation requirements regarding fees and charges. Specifically, a reporting entity that establishes or increases a fee or charge by rule must submit a request for consultation to all members of Governmental Operations, the Commission Assistant, and the Fiscal Research Division on the same date the notice of the text of the rule is published. This request must contain a written report stating 1) the amount of the current fee or charge, 2) the amount of the proposed new or increased fee or charge, 3) the statutory authority for the fee or charge, and 4) a detailed explanation of the need for the establishment or increase of the fee or charge. If the Commission does not hold a meeting to hear the consultation within 90 days after the text of the rule has been published and consultation request has been submitted, the consultation requirement is deemed satisfied. (Please see a copy of the attached session law.)

**Distribution of Consultation Documents:** As previously noted, reports and consultations submitted to the Governmental Operations e-mail address will be distributed to the chairs of the Commission, the Commission Assistant, the Fiscal Research Division and, in the case of a fee/charge consultation, to all members of Governmental Operations.

**Notice of Receipt of Consultation Request:** All consultation reports and requests submitted to the Commission e-mail address will receive a written response acknowledging receipt of the report and specifying the date when the 90-day time frame will be satisfied. When necessary, this response can be shared with the Codifier of the Rules to acknowledge compliance with the law.

## **CONTACTS**

Governmental Operations Email Address:  
[govops@ncleg.net](mailto:govops@ncleg.net)

Governmental Operations Website:  
[www.ncleg.net](http://www.ncleg.net)  
-Click on “Committees” under “Site Navigation” on the left hand side of home page  
-Click on “Available Committee & Commission Websites” under “Publications” bullet  
-Click on “Joint Legislative Commission on Governmental Operations”

Full Commission Committee Assistant:  
Kathy Davis, (919) 733-5850  
Room 1102, Legislative Building  
[huntla@ncleg.net](mailto:huntla@ncleg.net)

Fiscal Research Division:  
(919) 733-4910  
Room 619, Legislative Office Building

## Statutory Changes Governing Consultation with the Joint Legislative Commission on Governmental Operations

### Excerpts from SB 622, Appropriations Act of 2005, SL 2005-276

#### **PRIOR CONSULTATION WITH THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS**

**SECTION 6.7.(a)** The last paragraph of G.S. 120-76(8) is recodified as G.S. 120-76.1 and reads as rewritten:

**"§ 120-76.1. Prior consultation with the Commission.**

(a) Notwithstanding the provisions of ~~this subdivision~~ G.S. 120-76(8) or any other provision of law requiring prior consultation by the Governor with the Commission, whenever an expenditure is required because of an emergency that poses an imminent threat to public health or public safety, and is either the result of a natural event, such as a hurricane or a flood, or an accident, such as an explosion or a wreck, the Governor may take action ~~under this subsection~~ without consulting the Commission if the action is determined by the Governor to be related to the emergency. The Governor shall report to the Commission on any expenditures made under this ~~paragraph~~ subsection no later than 30 days after making the expenditure and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(b) Any agency, board, commission, or other entity required under G.S. 120-76(8) or any other provision of law to consult with the Commission prior to taking an action shall submit a detailed report of the action under consideration to the Chairs of the Commission, the Commission Assistant, and the Fiscal Research Division of the General Assembly. If the Commission does not hold a meeting to hear the consultation within 90 days of receiving the submission of the detailed report, the consultation requirement is satisfied.

(c) Consultations regarding the establishment of new fees and charges and the increase of existing fees and charges are governed by G.S. 12-3.1, and this section does not apply to those consultations."

**SECTION 6.7.(b)** G.S. 143-23(a1) reads as rewritten:

"(a1) Notwithstanding the provisions of subsection (a) of this section, a department, institution, or other spending agency may, with approval of the Director of the Budget, spend more than was appropriated for:

- (1) An object or line item within a purpose or program so long as the total amount expended for the purpose or program is no more than was appropriated from all sources for the purpose or program for the fiscal period;
- (2) A purpose or program, without consultation with the Joint Legislative Commission on Governmental Operations, if the overexpenditure of the purpose or program is:
  - a. Required by a court, Industrial Commission, or administrative hearing officer's order;
  - b. Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or
  - c. Required to call out the National Guard.

- The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations on any overexpenditures under this subdivision; or
- (3) A purpose or program, after consultation with the Joint Legislative Commission on Governmental Operations in accordance with G.S. 120-76(8), and only if: (i) the overexpenditure is required to continue the purpose or programs due to complications or changes in circumstances that could not have been foreseen when the budget for the fiscal period was enacted and (ii) the scope of the purpose or program is not increased. The consultation is required as follows:
- a. For a purpose or program with a certified budget of up to five million dollars (\$5,000,000), consultation is required when the authorization for the overexpenditure exceeds ten percent (10%) of the certified budget;
  - b. For a purpose or program with a certified budget of from five million dollars (\$5,000,000) up to twenty million dollars (\$20,000,000), consultation is required when the authorization for the overexpenditure exceeds five hundred thousand dollars (\$500,000) or seven and one-half percent (7.5%) of the certified budget, whichever is greater;
  - c. For a purpose or program with a certified budget of twenty million dollars (\$20,000,000) or more, consultation is required when the authorization for the overexpenditure exceeds one million five hundred thousand dollars (\$1,500,000) or five percent (5%) of the certified budget, whichever is greater;
  - d. For a purpose or program supported by federal funds or when expenditures are required for the reasons set out in subdivision (2) of this subsection, no consultation is required.

~~If the Joint Legislative Commission on Governmental Operations does not meet for more than 30 days, the Director of the Budget may satisfy the requirements of the subsection to report to or consult with the Commission by reporting to or consulting with a joint meeting of the Chairs of the Appropriations Committees of the Senate and the House of Representatives."~~

## **CONSULTATION NOT REQUIRED PRIOR TO ESTABLISHING OR INCREASING FEES IN ACCORDANCE WITH BUDGET ACT AND CLARIFICATION OF THE LAW PROVIDING LEGISLATIVE OVERSIGHT OF AGENCY FEES AND CHARGES**

**SECTION 6.8.(a)** Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee as authorized or anticipated in the Current Operations and Capital Improvements Appropriations Act of 2005 or the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, which was distributed in the Senate and the House of Representatives and used to explain this act.

**SECTION 6.8.(b)** G.S. 12-3.1 reads as rewritten:

### **"§ 12-3.1. Fees and charges by agencies.**

(a) Authority. – Only the General Assembly has the power to authorize an agency to establish or increase a fee or charge for the rendering of any service or fulfilling of any duty to the public. In the construction of a statute, unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute, the legislative grant of authority to an agency to ~~make and promulgate~~ adopt rules shall not be construed as a grant of authority to the agency to establish by rule a fee or a charge for the rendering of any service or fulfilling of any duty to the public, unless the statute expressly provides for the grant of authority to establish a fee or charge

for that specific service. Notwithstanding any other law, ~~an agency's establishment or increase of a fee or charge shall not go into effect until one of the following conditions has been met:~~

- ~~(1) The General Assembly has enacted express authorization of the amount of the fee or charge to be established or increased and the purpose of that fee or charge.~~
- ~~(2) The General Assembly has enacted general authorization for the agency to establish or increase the fee or charge, and the agency has consulted with~~

a rule adopted by an agency to establish or increase a fee or charge shall not go into effect until the agency has consulted with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee or charge to be established or increased. The agency shall submit a request for consultation to all members of the Commission, the Commission Assistant, and the Fiscal Research Division of the General Assembly on the same date the notice of text of the rule is published. The request for consultation shall consist of a written report stating (i) the amount of the current fee or charge, if applicable, (ii) the amount of the proposed new or increased fee or charge, (iii) the statutory authority for the fee or charge, and (iv) a detailed explanation of the need for the establishment or increase of the fee or charge.

(a1) If the Commission does not hold a meeting to hear the consultation required by subsection (a) of this section within 90 days after the notice of text of the rule has been published and the consultation request required by subsection (a) of this section has been submitted, the consultation requirement is satisfied.

(b) Definitions. – The following definitions apply in this section:

- (1) Agency. – Every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the legislative, executive or judicial branches of State government. The term does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of these subdivisions, the University of North Carolina, community colleges, hospitals, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.
- (2) Rule. – Every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency, including rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

(c) Exceptions. – This section does not apply to any of the following:

- (1) Rules establishing fees or charges to State, federal or local governmental units.
- (2) A reasonable fee or charge for copying, transcripts of public hearings, State publications, or mailing a document or other item.
- (3) Reasonable registration fees covering the cost of a conference or workshop.
- (4) Reasonable user fees covering the cost of providing data processing services.

(d) In lieu of the requirements of ~~subdivision (a)(2)~~ subsections (a) and (a1) of this section, the North Carolina State Ports Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations as provided in G.S. 143B-454(a)(11)."

**SECTION 6.8.(c)** Subsection (a) of this section expires June 30, 2007.